

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5676 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

=====

1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
PRUHAD SAURASHTRA SAFAI KAMDARMANDAL

Versus

DEVELOPMENT COMMISSIONER

-----  
Appearance:

MR PH PATHAK for Petitioner  
MR VM PANCHOLI AGP for Respondent No. 1  
MR YV SHAH for Respondent No. 2

-----  
CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/12/1999

ORAL JUDGEMENT

Ld. Advocate Shri P.H.Pathak is appearing on behalf of the petitioner Mandal and Ld. Advocate Shri Y.V.Shah is appearing on behalf of the respondent no.2. Kodinar Nagar Palika and Ld. Advocate Shri V.M.Pancholi, AGP is appearing on behalf of the respondent no.1 Development Commissioner, Gujarat State.

2. The brief facts of the present petition is that

award passed by Labour Court, Rajkot in Reference LCV No. 23/86 dated 8.2.89 wherein the Labour Court, Rajkot has granted the relief in favour of 8 workmen to make them permanent with effect from 1.6.88 and also directed the Municipality to pay all benefits to the said 8 workmen as a permanent employee from the date of 1.6.88. The petitioner Union has prayed in the petition that direction may be issued against the respondent no.2 Municipality to regularize the service of all the employees mentioned at Annexure C as regular employees of the Panchayat and to grant them all the benefits of Class IV employees from the initial date of appointment. It is further prayed that respondent no.2 to sanction the post to regularize the service of Safai Kamdar as per the direction of the Labour Court. It is also further prayed that to continue the employees on daily wages basis for the years and to deprive them under the provisions of the Industrial Disputes Act.

3. When the matter was taken up for final hearing today, learned advocate appearing on behalf of respondent No. 2 has produced on record one Resolution passed by the General Board bearing No. 66 dated 30th July, 1993 wherein it was resolved by the Panchayat that the eight workmen who were covered by the award produced in the petition were made permanent with effect from 1.6.1988 and subsequently with effect from 1.4.1982, benefit of Desai Pay Commission was granted and, thereafter, with effect from 1.12.1992, benefit of IVth Pay Commission was granted to these eight workmen. Therefore, according to Mr. Y.V.Shah, the learned advocate appearing for the respondent No. 2, the award passed by the Labour Court, Rajkot in Reference No. 23 of 1986 dated 8th February, 1989 has been fully complied with by the respondent Panchayat and, therefore, the petition does not require any decision on merits.

4. In this petition, as per the document at annexure "C", the petitioner Mandal has pointed out 19 names of the workmen and the prayer has been made in respect of 19 workmen. I have considered the submission made by Mr. Shah and have also checked up the resolution dated 31st July, 1993 produced by the learned advocate Mr. Shah which was passed by the panchayat and whereby eight workmen at sr. no. 1 to 8 in the award annexure "C" were granted benefits of permanency with effect from 1st July, 1988 and subsequently benefit of Desai Pay Commission and IVth Pay Commission also were granted. Mr. Shah has raised a contention that the employees mentioned at Sr.No. 9 to 19 in the award at annexure "C" are not the employees of the respondent Panchayat as per

letter dated 16.11.1999 written by the Chief Officer, Kodinar Nagar Panchayat which was produced on record.

5. In this petition, respondents nos. 1 and 2 have not filed any reply. This Court, while admitting this petition, has granted ad interim relief restraining the respondent authorities from terminating the services of the employees mentioned at Annexure "C" to the petition and the said ad interim relief was, subsequently, confirmed by this Court.

6. In view of the contention raised by Mr. Shah that the employees mentioned at sr.no. 9 to 19 of annexure "C" to the petition are not the employees of the respondent panchayat, and, therefore, they are not entitled to the benefits of the award passed by the labour court, Rajkot, this court cannot go into the disputed questions of fact while exercising the extra ordinary powers under Article 226 and/or 227 of the Constitution of India. This Court, while exercising such discretionary powers, cannot decide as to whether those workmen were employees of the respondent nagar panchayat or not since it has been disputed by the panchayat. Such controversy cannot be decided in this petition. In such circumstances, it would be just and proper for the petitioner union to raise industrial dispute in respect of the workmen at sr. no. 9 to 19 in annexure "C" for claiming benefit of permanency and such other similar benefits which has been granted to the workmen at sr.no. 1 to 8 of the award passed by the tribunal. Therefore, in so far as the workmen at sr. no. 1 to 8, who are covered in the award passed by the labour court Rajkot, this petition will not survive and so far as the workmen at sr. no. 9 to 19 are concerned, in view of the above discussion, they will have to raise industrial dispute since this Court cannot enter into the area of disputed questions of fact while exercising the extra ordinary jurisdiction under Article 226 and/or 227 of the Constitution of India.

Therefore, in respect of the workmen at sr.no. 9 to 19 in annexure "C", it will be open for the petitioner union to raise industrial dispute before the appropriate authority in accordance with law and as and when such dispute is raised by the petitioner union, the appropriate authority under the Industrial Disputes Act, 1947, same shall be considered by the appropriate authority under the Act and will decide as to whether the same should be referred to the appropriate forum under the Industrial Disputes Act, 1947 or not and while deciding the same, the appropriate authority under the

Act shall not reject the dispute only and solely on the ground of delay and will also consider and take into account the pendency of this petition and thereafter, will consider the nature of demand and dispute raised by the petitioner union and will pass appropriate order in accordance with law as expeditiously as possible, preferably within four months from the date of receiving such industrial dispute from the petitioner union and the petitioner union will raise such dispute before the appropriate authority within three months from the date of receiving certified copy of this order.

In the above premises, this petition shall stand disposed of with a liberty to the petitioner union to raise industrial dispute before the appropriate authority claiming permanency benefits and such other benefits in respect of the workmen at sr. no. 9 to 19 of the impugned award which have been granted to the workmen at sr. no. 1 to 8 as per the award Annexure "C". The petitioner union will raise such dispute before the appropriate authority within three months from the date of receipt of copy of this order and the appropriate authority will decide the same in accordance with law and as expeditiously as possible preferably within four months from the date of raising such dispute before it by the petitioner union. The ad interim relief which has been granted initially by this court shall continue to operate till the appropriate authority takes decision as to whether the dispute should be referred to the appropriate forum or not. It is made clear that the appropriate authority will take such decision without taking into consideration the extent of delay in raising such dispute before it. Rule is discharged. There shall be no order as to costs.

3.12.1999. (H.K.Rathod,J.)

Vyas